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*Silver Arch Capital Partners LLC*

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8  
9 **UNITED STATES DISTRICT COURT**

10 **SOUTHERN DISTRICT OF CALIFORNIA**

11 MCKINNEY CAPITAL &  
12 ADVISORY GROUP, LLC, a  
California limited liability company,

13 Plaintiff,

14 v.

15 SILVER ARCH CAPITAL  
16 PARTNERS LLC, a New Jersey limited  
liability company; and DOES 1 through  
17 50, inclusive,

18 Defendants.

Case No. **'20CV0043 BTM WVG**

**NOTICE OF REMOVAL OF ACTION  
TO FEDERAL COURT**

TO THE CLERK OF THE ABOVE-ENTITLED COURT, ALL PARTIES, AND  
THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that pursuant to 28 U.S.C. §§ 1332, 1441 *et seq.*, Defendant Silver Arch Capital Partners LLC (“Silver Arch” or “Defendant”), by and through its undersigned attorneys, hereby removes the above-captioned civil action, and all claims and causes of action therein, from the Superior Court of California for the County of San Diego, Central Division, where it is currently pending as Case No. 37-2019-00052881-CU-FR-CTL, to the United States District Court for the Southern District of California, and in support thereof, respectfully states as follows:

### **GROUND FOR REMOVAL**

1. Plaintiff McKinney Capital and Advisory Group LLC (“McKinney Capital” or “Plaintiff”) commenced this action in the Superior Court of California, County of San Diego, Central Division, Case No. 37-2019-00052881-CU-FR-CTL, on or about October 4, 2019. True copies of all process, pleadings, orders, and other records in the state court action are attached hereto as Exhibit A.

2. As set forth more fully below, this Court has subject matter jurisdiction under 28 U.S.C. § 1332, which confers original jurisdiction of “all civil actions where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between . . . citizens of different States.”

#### **A. The Amount-In-Controversy Requirement Is Satisfied.**

3. The amount in controversy in this matter exceeds the sum or value of \$75,000, exclusive of interest and costs, satisfying the amount in controversy requirements of 28 U.S.C. § 1332(a). The Complaint alleges that Plaintiff “has suffered damages in an amount that exceeds \$75,000.00.” (Ex. A [Compl. at ¶ 80]). Because the amount in controversy exceeds the sum of \$75,000, exclusive of interest and costs, removal on the basis of diversity should be allowed pursuant to 28 U.S.C. § 1441(b).

#### **B. Complete Diversity Exists Between Plaintiff And Defendant.**

4. At the time of the filing of this action, Plaintiff McKinney Capital alleged

1 that it is a California limited liability company with its principal place of business in San  
2 Diego, California (Ex. A [Compl. at ¶ 1]). Plaintiff's Complaint contained no allegations  
3 as to the citizenship of its members (id.).

4 5. At the time this lawsuit was filed and as of the date of this notice, Defendant  
5 Silver Arch was and is a New Jersey limited liability company with its principal place of  
6 business in Hackensack, New Jersey, and all of Defendant's members were and are  
7 citizens of the State of New Jersey (Ex. B [Affidavit of Jeffrey Wolfer at ¶ 2]).

8 6. On November 20, 2019, Defendant Silver Arch filed a notice of removal in  
9 this Court pursuant to 28 U.S.C. §§ 1332 and 1441, Case No. 3:19-cv-02203-L-LL, based  
10 on the allegations in Plaintiff McKinney Capital's State court Complaint and Defendant's  
11 allegations that "[n]one of the members of Defendant are citizens of the State of  
12 California" and that "none of the members of Plaintiff are citizens of the State of New  
13 Jersey." (Dkt. No. 1, Case No. 3:19-cv-02203-L-LL).

14 7. On November 21, 2019, the Hon. M. James Lorenz issued an order  
15 remanding the case on grounds that diversity of citizenship was not ascertainable from  
16 the face of the Complaint and that Defendant Silver Arch's diversity allegations were  
17 "insufficient to conclude that none of Plaintiff's members is a citizen of the same state as  
18 any Defendant's members." (Dkt. No. 2, Case No. 3:19-cv-02203-L-LL).

19 8. Thereafter, on or about November 25, 2019, Defendant requested Plaintiff  
20 disclose the state of citizenship for each of Plaintiff's members for the purpose of  
21 ascertaining whether removability based on diversity of citizenship exists. Plaintiff  
22 declined to disclose each of its member's state of citizenship.

23 9. On or about November 25, 2019, Defendant propounded two special  
24 interrogatories on Plaintiff, which sought the identities and states of citizenship of each  
25 of Plaintiff's members.

26 10. On December 26, 2019, Plaintiff served Defendant with responses to the  
27 special interrogatories, which consisted entirely of boilerplate objections and lacked any  
28 substantive answers.

11. On January 2, 2020, Defendant sent a meet-and-confer letter to Plaintiff, wherein it requested that Plaintiff serve revised, adequate, and responsive answers to the two special interrogatories.

12. On January 3, 2020, Plaintiff served Defendant with amended responses to the special interrogatories, which disclosed that Plaintiff's sole member, an individual, was and is a citizen of and domiciled in California (Ex. C [Pl.'s First Am. Resp. to Def.'s Special Interrogs. (Set One) at 2-3]).

13. The Complaint also names Defendants "DOE 1 through DOE 50." (Ex. A [Compl. at ¶ 3]). For purposes of removal, however, "the citizenship of defendants sued under fictitious names shall be disregarded." 28 U.S.C. § 1441(b)(1). Therefore, the inclusion of "Doe" defendants in the state court Complaint has no effect on removability. In determining whether diversity of citizenship exists, only the named defendants are considered. See Newcombe v. Adolf Coors Co., 157 F.3d 686, 690-91 (9th Cir. 1998).

14. Because Plaintiff's sole member does not share a state of citizenship with any of Defendant's members, the diversity requirement of 28 U.S.C. § 1332 is satisfied.

**THE OTHER PROCEDURAL REQUISITES  
FOR REMOVAL ARE SATISFIED**

15. This removal notice is timely filed pursuant to 28 U.S.C. § 1446(b)(3) because it is filed within thirty days after Defendant's receipt, "through service or otherwise, of a copy of an . . . other paper from which it may first be ascertained that the case is one which is or has become removable." Removability based on diversity of citizenship does not appear on the face of Plaintiff's Complaint because the Complaint contains no allegations as to the identity or state of citizenship of each of Plaintiff's members (Ex. A [Compl.] ¶ 1]; Dkt. 2, Case No. 3:19-cv-02203-L-LL). It was not until January 3, 2020, by Plaintiff serving amended answers to Defendant's special interrogatories disclosing the California citizenship of its sole member, that Defendant became aware that this case is removable. Defendant files this notice within thirty days thereafter.

1           16. This action is properly removed to the United States District Court for the  
2 Southern District of California, which is “the district and division embracing the place  
3 where [the] action is pending.” 28 U.S.C. § 1441(a); see also 28 U.S.C. § 84(d) (listing  
4 the counties within the Southern District of California).

5           17. Defendant has complied with 28 U.S.C. §§ 1446(a) and (d). Under 28  
6 U.S.C. § 1446(a), true and correct copies of all the process, pleadings, or orders on file in  
7 the state court or served on Defendant in the state court are attached hereto as Exhibit A.  
8 Pursuant to 28 U.S.C. § 1446(d), Defendant will promptly serve a notice of filing of  
9 removal, with a copy of this Notice of Removal attached thereto, on counsel for Plaintiff  
10 and will file a notice of filing of removal, with a copy of this Notice of Removal attached  
11 thereto, with the Clerk of the Superior Court of California, County of San Diego, Central  
12 Division, Case No. 37-2019-00052881-CU-FR-CTL. Copies of the Notice (without  
13 Exhibits A-C) and the certificate of service of the Notice to Plaintiff and the Superior  
14 Court of the State of California, County of San Diego are attached hereto as Exhibit D.

15  
16 Date: January 7, 2020

WRIGHT, L’ESTRANGE & ERGASTOLO

17 *Attorneys for Defendant*  
18 *Silver Arch Capital Partners LLC*

19 By: /s/ Joseph T. Ergastolo  
20 Joseph T. Ergastolo